

AS

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 96-337-C - ORDER NO. 97-149
FEBRUARY 24, 1997

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IN RE: Application of KMC Telecom, Inc. for)
a Certificate of Public Convenience and) ORDER
Necessity to Provide Intrastate Inter-) APPROVING
exchange Services, Switched and Special) CERTIFICATE
Access, and Local Exchange Services.)

This matter comes before the Public Service Commission of South Carolina ("the Commission") by way of the application of KMC Telecom, Inc. ("KMC" or "the Company"). The Application requests that the Commission grant a Certificate of Public Convenience and Necessity for the Company to provide intrastate interexchange services, local exchange services through the use of KMC's own facilities and the resold services of incumbent local exchange carriers, and special access¹ local exchange services in the areas served by BellSouth Telecommunications, Inc. The Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1996), and the Regulations of the Commission.

By letter dated November 15, 1996, the Commission's Executive Director instructed KMC to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected

1. The term "special access" is used by KMC, and throughout this Order, primarily to refer to providing customers access to interexchange carriers and interexchange carriers access to KMC's customers.

by the Application. The purpose of the Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. KMC complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC").

A hearing was convened on January 22, 1997, at 10:30 a.m. in the Commission's Hearing Room. The Honorable Guy Butler, Chairman, presided. KMC was represented by Faye Flowers, Esquire, and the Commission Staff ("Staff") was represented by Catherine D. Taylor, Staff Counsel. SCTC did not appear at the hearing.

Prior to the hearing, KMC and the SCTC executed a Stipulation dated January 6, 1997, and filed with the Commission on January 8, 1997. The Stipulation was entered into evidence at the hearing as Hearing Exhibit No. 1. The Stipulation provides the following:

(1) The SCTC did not oppose the granting of a statewide Certificate of Public Convenience and Necessity to KMC if the Commission made the necessary findings to grant the Certificate and if all stipulated conditions are met;

(2) KMC agreed that any Certificate granted by the Commission will authorize KMC to provide service only to customers located in non-rural local exchange company ("LEC") service areas except as otherwise provided;

(3) KMC agreed that it did not request the Commission to find whether competition is in the public interest for rural

areas;

(4) KMC agreed that it would not provide local service, by its own facilities or otherwise, to any customer in a rural incumbent LEC's service area, unless and until KMC provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. KMC also acknowledged that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause;

(5) KMC agreed that if, after KMC gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or the Commission institutes a proceeding of its own, then KMC will not provide service to any customer located within the service area in question without prior and further Commission approval;

(6) KMC acknowledged that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any

future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures and guidelines do not conflict with Federal or State law;

(7) KMC and the SCTC agreed that all rights under Federal and State law are reserved to the rural incumbent LECs, and that the Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled; and

(8) KMC agreed to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

This stipulation is consistent with our decision in Order No. 96-494 (Docket No. 96-073-C). It was signed voluntarily by both the SCTC and KMC and was filed with the Commission prior to the hearing in this matter. We therefore accept the Stipulation.

At the hearing on this matter, KMC presented Tricia Breckenridge to testify in support of the Application. Ms. Breckenridge is the Vice President of Market Development for KMC. The purpose of Ms. Breckenridge's testimony was to provide (1) a description of KMC's Application for a Certificate of Public Convenience and Necessity to provide local and interexchange services; (2) a description of KMC's managerial and technical qualifications; (3) a description of KMC's financial qualifications; (4) a description of specific services which KMC

proposes to offer in South Carolina; (5) a discussion and justification of the waivers of Commission regulations which KMC is requesting; and (6) a demonstration that KMC's proposed services are consistent with the public interest. According to Ms. Breckenridge, KMC proposes to provide (1) local exchange services both over its own facilities and through the resale of services and (2) interexchange service through the resale of the services of certificated interexchange carriers.

DISCUSSION

With respect to local exchange services and access services, the record reveals that KMC intends to offer services which may be classified in the major categories of (1) local exchange access services, (2) local exchange and intraLATA usage services, and (3) carrier access services. S.C. Code Ann. §58-9-280 (Supp. 1996) provides that "the [C]ommission may grant a certificate to operate as a telephone utility ... to applicants proposing to furnish local telephone service in the service territory of an incumbent LEC."

After full consideration of the applicable law, KMC's Application, and the evidence presented at the hearing, the Commission finds and concludes that KMC's request for a Certificate to provide local telephone service in the form of local exchange services and access services should be granted. The Commission's determination is based on the following criteria as provided in S.C. Code Ann. §58-9-280 (Supp. 1996) and the evidence presented which relates to that criteria:

(1) The Commission finds that KMC possesses the technical, financial, and managerial resources sufficient to provide the services requested. S.C. Code Ann. §58-9-280(B)(1) (Supp. 1996). To demonstrate KMC's technical qualifications, witness Breckenridge testified that KMC has completed construction of and has begun operation of a 60 mile digital, optical fiber, SONET ring network in Huntsville, Alabama. According to Ms. Breckenridge, KMC intends to construct a similar network in Aiken to support its South Carolina operations. KMC has also contracted with I-NET, Inc. to provide network management support for KMC's proposed network, including network design, implementation, operations, and maintenance. Ms. Breckenridge also testified that KMC has received authorization to provide local exchange services in Florida, Texas, Alabama, Virginia, and Puerto Rico and interexchange services in Alabama, Virginia, and Puerto Rico.

Concerning KMC's managerial qualifications, Ms. Breckenridge testified that KMC's management team has considerable experience and expertise in the telecommunications industry. Regarding KMC's financial resources, Ms. Breckenridge stated that KMC is a privately-held Delaware corporation whose stock is 100% owned by Harold N. Kamine and that KMC has access to the financing and capital necessary to develop and construct its proposed South Carolina network and to provide the services for which authority is requested. To demonstrate that KMC has availability to the financial resources to permit KMC to offer the services for which it seeks authority, Ms. Breckenridge offered that KMC is

affiliated with the Kamine group of companies which consists of more than 10 privately-held corporations collectively specializing in the development, financing, engineering, and operation of capital-intensive infrastructure projects, including power generation. According to Ms. Breckenridge, related Kamine companies in the power generation industry had revenues in excess of \$110,000,000 in 1995.

No party offered any evidence in opposition to Ms. Breckenridge's testimony. Based on the undisputed testimony of Breckenridge, the Commission finds that KMC possesses the technical, financial, and managerial resources sufficient to provide the services requested.

(2) The Commission finds that KMC will provide services that will meet the service standards of the Commission. S.C. Code Ann. §58-9-280(B)(2) (Supp. 1996). Ms. Breckenridge testified that KMC intends to offer high quality local exchange service that will offer consumers a competitive alternative to the services offered by incumbent local exchange carriers. Ms. Breckenridge specifically stated that KMC will meet all service standards that the Commission has or may adopt. No party offered any evidence to dispute Ms. Breckenridge's testimony. Based on the undisputed testimony from Ms. Breckenridge, the Commission believes, and so finds, that KMC will provide telecommunications services which will meet the service standards of the Commission.

(3) The Commission finds that KMC's "provision of service will not adversely impact the availability of affordable local

exchange service." S.C. Code Ann. §58-9-280(B)(3) (Supp. 1996). Ms. Breckenridge stated that KMC is committed to meeting whatever universal service obligations are imposed upon competitive local exchange service providers and further that KMC will offer its services at prices which are competitive with prevailing rates offered by the incumbent carrier. No party offered any evidence that the provision of local exchange service by KMC would adversely affect local rates. Therefore, based on the undisputed evidence of record, the Commission finds that provision of local exchange services by KMC will not adversely impact affordable local exchange service.

(4) The Commission finds that KMC will support universally available telephone service at affordable rates. S.C. Code Ann. §58-9-280(B)(4) (Supp. 1996). Ms. Breckenridge testified that KMC recognizes its obligations to contribute to the preservation of universal service and that KMC fully intends to comply with all South Carolina and federal universal service requirements, including any obligations to contribute to universal service mechanisms on the state and federal levels as the universal service mechanisms may apply to KMC. No party disputed Ms. Breckenridge's testimony. Based on the undisputed evidence of record, the Commission finds that KMC will participate in support of universally available telephone service at affordable rates.

(5) The Commission finds that the provision of local exchange service by KMC "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 1996).

Ms. Breckenridge offered that the competition of KMC offering services in South Carolina will further the public interest by expanding the availability of technologically advanced telecommunications facilities and services in South Carolina and will afford consumers an additional choice of local and interexchange service providers. Further, Ms. Breckenridge stated that the public would benefit directly through the availability of high-quality and reliable digital transmission services to be offered by KMC and would benefit indirectly through the expanded presence of KMC in the market which would increase the incentives for other providers to operate more efficiently, offer more services, reduce prices, and improve quality of service. Ms. Breckenridge's testimony was undisputed as no party offered any evidence that approval of KMC's Application would adversely impact the public interest. Therefore, the Commission finds that approval of KMC's Application for a Certificate to provide local exchange service "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 1996).

With regard to the provision of local service, the Application contained a request for a waiver of 26 S.C. Code Ann. Regs. 103-631 which requires that telephone directories be published and distributed. In support of the request for waiver, Ms. Breckenridge stated that KMC intends to enter into an agreement with BellSouth's directory publisher to include the names and numbers of KMC's customers in the BellSouth directories. Pursuant to these arrangements with BellSouth, Ms. Breckenridge

testified that KMC's customers would receive their directories through BellSouth's existing distribution network.

In addition to requesting authority to provide local exchange and access services, KMC requests authority to provide resold intrastate interexchange telecommunications services. As stated above, the record reveals KMC's financial, technical, and managerial abilities to provide telecommunications services in South Carolina. The record further shows KMC's services, operations and marketing procedures. Upon full consideration of KMC's Application and the evidence presented at the hearing, the Commission finds that KMC has the experience, capability, and financial resources to provide resold intrastate interexchange telecommunications services in South Carolina, and further the Commission finds and concludes that KMC's request for a Certificate to provide resold intrastate interexchange telecommunications services should be granted.

Therefore, based on the findings above, the Commission finds and concludes that the Certificate sought by KMC should be granted.

IT IS THEREFORE ORDERED THAT:

1. KMC is hereby granted a Certificate of Public Convenience and Necessity, and the accompanying authority, to provide (1) local telephone services in the form of local exchange services and access services and (2) resold intrastate interexchange telecommunications services. KMC is hereby authorized to provide intrastate resold and facilities-based local exchange service in

South Carolina, and KMC is hereby authorized to provide resold intrastate interLATA services in South Carolina and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. With regard to KMC's local service offerings, KMC shall file, prior to offering local exchange services in South Carolina, a final tariff of its service offerings. The final tariff shall include the modifications and changes to the proposed tariff to which KMC agreed with the Commission Staff.

3. The Commission adopts a rate design for KMC for its resale intrastate interLATA services which includes only maximum rate levels for each tariff charge. For intrastate interLATA calls utilizing the Company's operator services, KMC may not impose a fixed operator charge more than the intrastate operator charges then currently approved for AT&T Communications, and for the usage portion of the call, KMC may not charge more than the intrastate rates charged by AT&T Communications at the time such call is completed. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

4. KMC shall not adjust its rates for intrastate interexchange services below the approved maximum level without notice to the Commission and to the public. KMC shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1996).

5. With regard to its resold intrastate interexchange services, KMC shall file its revised maximum tariff and an accompanying price list within thirty (30) days from the date of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

6. With regard to its resold intrastate interexchange services, KMC is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similarly to

facilities-based interexchange carriers.

7. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. KMC shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If KMC changes underlying carriers, it shall notify the Commission in writing.

9. With regard to the origination and termination of toll calls within the same LATA, KMC shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993).

10. KMC shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

11. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. KMC shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of

receipt of this Order. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced, and the Company is directed to comply with the Commission regulations unless waived by the Commission.

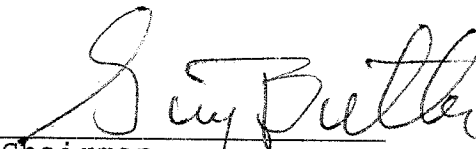
12. KMC shall conduct its business in accordance with Commission decisions and Orders, both past and future, including, but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

13. The Stipulation filed by KMC and the SCTC is approved by this Commission, is binding upon KMC and the SCTC, and shall be implemented as set forth in the Stipulation. We therefore make no findings or conclusions regarding competition in the rural areas of South Carolina.

14. KMC's request for a waiver of the requirement contained in 26 S.C. Code Ann. Regs. 103-631 that the Company publish and distribute local exchange directories is granted.

15. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)

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FEBRUARY 24, 1997
ATTACHMENT A

ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS
FOR INTEREXCHANGE COMPANIES AND AOS'S

COMPANY NAME _____

ADDRESS _____

FEI NO. _____

CITY, STATE, ZIP CODE _____

PHONE NUMBER _____

(1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS* FOR 12
MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.

* THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION
WORK IN PROGRESS, ACCUMULATED DEFERRED INCOME TAX,
CONTRIBUTIONS IN AID OF CONSTRUCTION AND CUSTOMER DEPOSITS.

(4) PARENT'S CAPITAL STRUCTURE* AT DECEMBER 31 OR FISCAL YEAR
ENDING _____.

* THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT PORTION
PAYABLE), PREFERRED STOCK AND COMMON EQUITY.

(5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND
EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.

(6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE
AMOUNT OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS
WELL AS METHOD OF ALLOCATION OF COMPANY'S RATE BASE INVESTMENT
(SEE #3 ABOVE).

SIGNATURE _____

NAME (PLEASE TYPE OF PRINT) _____

TITLE _____